

JUL 25 2016

LAW OFFICES OF  
**ANDREW L. PACKARD**

100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952  
PHONE (707) 763-7227 FAX (707) 763-9227  
INFO@PACKARDLAWOFFICES.COM

July 19, 2016

Via Certified Mail

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Hon. Eric Holder, Attorney General  
U.S. Department of Justice  
Citizen Suit Coordinator  
950 Pennsylvania Avenue, Room 2615, NW  
Washington, DC 20530

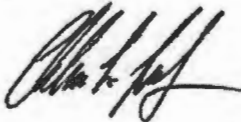
Citizen Suit Coordinator  
Environment and Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, D.C. 20044-7415

Re: *California Sportfishing Protection Alliance v. Agricultural Management & Production Company, et al; USDC, EDCA, Case No. 2:14-CV-02328-KJM-AC*

Dear Citizen Suit Coordinators,

On or about July 18, 2016 the parties in the above-captioned case agreed to enter into a settlement agreement resolving this matter. Pursuant to the terms of the settlement agreement and 40 C.F.R. § 135.5, the enclosed document is being submitted to the United States Environmental Protection Agency and the U.S. Department of Justice for a 45-day review period. If you have any questions regarding the agreement, please feel free to contact me or counsel for Defendants listed below.

Sincerely,



Andrew L. Packard  
Attorneys for Plaintiff  
California Sportfishing Protection Alliance

cc: via First Class Mail:

Jared Blumenfeld, Regional Administrator, EPA Region 9

cc: via e-mail:

Bill Davis, Counsel for Defendants  
Laurie Kermish, EPA Region 9

ANDREW L. PACKARD (State Bar No. 168690)  
MEGAN E. TRUXILLO (State Bar No. 275746)  
WILLIAM N. CARLON (State Bar No. 305739)  
Law Offices of Andrew L. Packard  
100 Petaluma Blvd. N., Suite 301  
Petaluma, CA 94952  
Tel: (707) 763-7227  
Fax: (707) 763-9227  
E-mail: Andrew@packardlawoffices.com

Attorneys for Plaintiff  
CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE, a non-profit  
corporation,

Plaintiff,

vs.

AGRICULTURAL MANAGEMENT  
AND PRODUCTION COMPANY, INC.,  
AGRICULTURAL MANAGEMENT  
AND PRODUCTION COMPANY, LLC,  
and ROBERT SMYTHE,

Defendants.

Case No. 2:14-CV-02328-KJM-AC

**[PROPOSED] SETTLEMENT  
AGREEMENT**

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387)

**WHEREAS**, Plaintiff California Sportfishing Protection Alliance (hereinafter “CSPA”) is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of California’s waters;

**WHEREAS**, Defendant Agricultural Management and Production Company, Inc., Defendant Agricultural Management and Production Company, LLC and Defendant Robert Smythe (collectively “Defendants”) own an inactive and historic mining site commonly referred to as the “Afterthought Mine,” located at Sections 10, 11 & 15, T33N, R2W, MDM,

1 24 miles East of Redding, California ("the Site"). Defendants have never operated the mine at  
2 this site.

3       **WHEREAS**, Defendants allege that they have never operated this mining site as a  
4 mining operation, and allege that they did not create the conditions at the site, caused by  
5 historic mining operations before Defendants purchased the property, leading to any discharge  
6 of pollutants from the site, and only purchased the site for the purpose of creating an  
7 educational historic site for school children.

8       **WHEREAS**, the Defendants allege that they do not have the money or other resources  
9 to apply for an NPDES Permit or to remediate or monitor the site, and allege that the State  
10 Regional Water Resources Control Board does not issue NPDES Permits in such  
11 circumstances to impoverished landowners, and allege that the State or Federal agencies may  
12 pursue obtaining the funds with which to remediate and/or monitor this site.

13       **WHEREAS**, the Defendants allege that there is no statutory provision in the Clean  
14 Water Act or the NPDES Permit process that provides a resolution of the problem of the  
15 impoverished landowner who has come into the possession of an historically operated mining  
16 site, which is causing contemporary discharges, and allege that the Defendant Robert Smythe  
17 is, in this case, an elder 84 year old whose only income is his Social Security retirement  
18 payments, and allege that the Site was purchased with the financial backing of a wealthy  
19 woman who was allegedly murdered and whose estate allegedly could no longer pursue the  
20 historic educational site plans or remediation, allegedly leaving the site, in effect, as an  
21 "orphaned" site.

22       **WHEREAS**, CSPA and Defendants collectively shall be referred to as the "Parties;"

23       **WHEREAS**, the Site collects and discharges pollutants from the Site into Little Cow  
24 Creek, which is tributary to the Sacramento River, and the Sacramento - San Joaquin Delta;

25       **WHEREAS**, Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of  
26 any pollutant into waters of the United States, unless such discharge is in compliance with  
27 various enumerated sections of the Act;

1       **WHEREAS**, on or about August 6, 2014, Plaintiff provided notice of Defendants'  
2 violations of the Act ("Notice Letter"), and of its intention to file suit against Defendants to the  
3 Administrator of the United States Environmental Protection Agency ("EPA"); the  
4 Administrator of EPA Region IX; the U.S. Attorney General; the Executive Director of the  
5 State Board; the Executive Officer of the Regional Water Quality Control Board, Central  
6 Valley ("Regional Board"); and to Defendants, as required by the Act, 33 U.S.C.  
7 §1365(b)(1)(A) (a true and correct copy of CSPA's Notice Letter is attached as **Exhibit A** and  
8 incorporated herein by reference);

9       **WHEREAS**, on or about May 29, 2015, CSPA filed its First Amended Complaint  
10 ("Complaint") against Defendants in the United States District Court, Eastern District of  
11 California, (this matter hereinafter referred to as "the Action");

12       **WHEREAS**, the Parties agree that it is in their mutual interest to resolve the Clean  
13 Water Act matter as to all entities and persons named in the Notice Letter without litigation  
14 and enter into this Settlement Agreement ("Agreement");

15       **WHEREAS**, for purposes of this Agreement only, the Parties stipulate that venue is  
16 proper in this Court, and that Defendants do not contest the exercise of jurisdiction by this  
17 Court to dismiss this matter with prejudice under the terms of this Agreement;

18       **WHEREAS**, this Agreement shall be submitted to the United States Department of  
19 Justice for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c); and shall  
20 thereafter be submitted for approval by the Court;

21       **WHEREAS**, at the time the Agreement is submitted for approval to the United States  
22 District Court, CSPA shall submit a Notice of Settlement and inform the Court of the expected  
23 dismissal date following the expiration of the statutory review period;

24       **AND WHEREAS**, upon expiration of the statutory review period, the Parties shall file  
25 with the Court a Stipulation and Order that shall provide that the Complaint and all claims  
26 therein shall be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2)  
27 and request that the Court retain jurisdiction for the enforcement of this Agreement as  
28



1 provided herein (the date of entry of the Order to dismiss shall be referred to herein as the  
2 "Court Approval Date").

3 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTling**  
4 **PARTIES AS FOLLOWS:**

5 **I. COMMITMENTS OF PLAINTIFF CSPA**

6 **1. Notice of Settlement and Statutory Agency Review.** Within five (5) business  
7 days of the mutual execution of this Agreement, Plaintiff shall submit this Agreement to the  
8 United States Department of Justice ("DOJ") for the statutory 45-day agency review period set  
9 forth in 33 U.S.C. §1365(c) and submit a Notice of Settlement to the federal District Court.

10 **2. Case Dismissal.** Within seven (7) days of the expiration of the 45-day agency  
11 review period, the Plaintiff shall file with the Court a Stipulation and Order, signed by both  
12 Parties, providing that:

13 a. The Complaint and all claims against Defendants shall be dismissed with  
14 prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2); and

15 b. The Court shall retain and have jurisdiction over the Parties with respect  
16 to disputes arising under this Agreement. Nothing in this Agreement shall be construed  
17 as a waiver of any Party's right to appeal from an order that arises from an action to  
18 enforce the terms of this Agreement.

19 **II. COMMITMENTS OF DEFENDANTS**

20 **1. Compliance with the Clean Water Act.** Defendants agree to cooperate with  
21 the Central Valley Regional Water Quality Control Board and any other State or Federal  
22 agency in the agency's pursuit of funding and remediation efforts, such that the discharges  
23 discussed in the Notice Letter are addressed by: (a) the partial or complete elimination of the  
24 discharges; (b) the development of an NPDES permit for the discharges; (c) the remediation of  
25 the Site; or (d) any combination of the above, as may be directed by the Central Valley  
26 Regional Water Quality Control Board.

1           **2.       Recordation of this Settlement Agreement with the Shasta County**

2   **Assessor's Office.** In an effort to notify future owners or transferees of the Site of the fact that  
3   the Site, as of the date of the Parties' execution of stipulated dismissal of the Action, is subject  
4   to the permitting requirements of Section 301(a) of the Clean Water Act (33 U.S.C. § 1311(a),  
5   Defendants shall file a copy of the file-endorsed order dismissing the Action with the Shasta  
6   County Recorder's Office.

7           **3.       Quarterly Compliance Reporting.** Beginning on October 1, 2016, and bi-  
8   annually thereafter through the year 2020, Defendants shall provide a written summary of their  
9   efforts to comply with this Agreement to CSPA pursuant to the Notice provisions herein.

10   **II.    MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS**

11           **1.       Mitigation Payment In Lieu Of Civil Penalties.** As mitigation to address  
12   any potential harm from the Clean Water Act violations alleged in CSPA's Complaint,  
13   Defendants agree to pay the sum of \$5,000 to the Rose Foundation for Communities and the  
14   Environment ("Rose Foundation") for projects to improve water quality in the Sacramento  
15   River and the Sacramento-San Joaquin Delta. Such mitigation payment shall be remitted  
16   directly to the Rose Foundation at: Rose Foundation, Attn: Tim Little, 1970 Broadway, Suite  
17   600, Oakland, CA 94612, within ten (10) days of the mutual execution of this Agreement.

18           **2.       Compliance Monitoring Funding.** To defray CSPA's investigative, expert,  
19   consultant and attorneys' fees and costs associated with monitoring Defendants' compliance  
20   with this Agreement, Defendants agree to remit \$2,000 to a compliance monitoring fund  
21   maintained by counsel for CSPA, subject to accounting of those funds annually until the year  
22   2020.

23           **3.       Reimbursement of Fees & Costs.** Defendants agree to reimburse CSPA in  
24   the amount of \$5,000 to defray a portion of CSPA's investigative, expert, consultant, and  
25   attorneys' fees and costs, and all other costs incurred as a result of bringing and resolving this  
26   Action.

27           **4.       Payments Schedule.** All remittances due under Paragraphs II.2 and II.3 above  
28

1 (\$7,000) shall be made payable to the "Law Offices of Andrew L. Packard Attorney Client  
2 Trust Account" and remitted to the firm at the Notice address below within ten (10) days of  
3 the mutual execution of this Agreement.

4 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT,**  
5 **JUDICIAL ARBITRATION**

6 1. If a dispute under this Agreement arises, or either Party believes that a breach  
7 of this Agreement has occurred, the Parties shall meet and confer within seven (7) days of  
8 receiving written notification from the other Party of a request for a meeting to determine  
9 whether a breach has occurred and to develop a mutually agreed upon plan, including  
10 implementation dates, to resolve the dispute. If the Parties fail to meet and confer, or the  
11 meet-and-confer does not resolve the issue, after at least seven (7) days have passed after the  
12 meet-and-confer occurred or should have occurred, either Party shall be entitled to request  
13 judicial arbitration in the District Court of California, Eastern District, including filing a  
14 motion with the District Court of California, Eastern District, which shall retain jurisdiction  
15 over the Action until the Termination Date for the limited purposes of enforcement of the  
16 terms of this Agreement. The Parties shall be entitled to seek fees and costs incurred in any  
17 such motion, and such fees and costs shall be awarded, pursuant to the provisions set forth in  
18 the then-applicable federal Clean Water Act and Rule 11 of the Federal Rules of Civil  
19 Procedure, and applicable case law interpreting such provision.

20 2. **Defendants' Waiver and Release.** Defendants, on their own behalf and on  
21 behalf of any Released Defendant Party under their control, release CSPA (and its officers,  
22 directors, employees, members, parents, subsidiaries, and affiliates, and each of their  
23 successors and assigns, and its agents, attorneys, and other representative) from, and waives all  
24 claims which arise from or pertain to the Action, including all claims for fees (including fees  
25 of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or  
26 which could have been claimed for matters associated with or related to the Action.

1 **IV. MISCELLANEOUS PROVISIONS**

2       **1.**       The Parties enter into this Agreement for the purpose of avoiding prolonged and  
3 costly litigation. Nothing in this Agreement shall be construed as, and Defendants expressly do  
4 not intend to imply, an admission as to any fact, finding, issue of law, or violation of law.  
5 However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities,  
6 and duties of the Parties under this Agreement.

7       **2.**       The Agreement may be executed in one or more counterparts which, taken  
8 together, shall be deemed to constitute one and the same document. An executed copy of this  
9 Agreement shall be valid as an original.

10       **3.**       In the event that any one of the provisions of this Agreement is held by a court  
11 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

12       **4.**       The language in all parts of this Agreement, unless otherwise stated, shall be  
13 construed according to its plain and ordinary meaning. This Agreement shall be construed  
14 pursuant to California law, without regarding to conflict of law principles.

15       **5.**       The undersigned are authorized to execute this Agreement on behalf of their  
16 respective Parties and have read, understood and agreed to be bound by all of the terms and  
17 conditions of this Agreement.

18       **6.**       All agreements, covenants, representations and warranties, express or implied,  
19 oral or written, of the Parties concerning the subject matter of this Agreement are contained  
20 herein. This Agreement and its attachments are made for the sole benefit of the Parties, and no  
21 other person or entity shall have any rights or remedies under or by reason of this Agreement,  
22 unless otherwise expressly provided for therein.

23       **7.       Notices.** Any notices or documents required or provided for by this  
24 Agreement or related thereto that are to be provided to CSPA pursuant to this Agreement shall  
25 be hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the  
26 alternative, shall be sent by electronic mail transmission to the email addresses listed below:

27               Bill Jennings, Executive Director  
28



California Sportfishing Protection Alliance  
3536 Rainier Avenue  
Stockton, CA 95204  
E-mail: [DeltaKeep@me.com](mailto:DeltaKeep@me.com)

With copies sent to:

Andrew L. Packard  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard North, Suite 301  
Petaluma, CA 94952  
Tel: (707) 763-7227  
E-mail: [Andrew@packardlawoffices.com](mailto:Andrew@packardlawoffices.com)

Any notices or documents required or provided for by this Agreement or related thereto that are to be provided to the City pursuant to this Agreement shall be sent by U.S. Mail, postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail transmission to the email addresses listed below:

Robert Smythe  
c/o William O. Davis  
Address and Phone Number below

With copies sent to:  
William O. Davis  
PO Box 492796  
Redding, CA 96049  
Tel: (530) 242-1275

Each Party shall promptly notify the other of any change in the above-listed contact information.

8. Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

9. No Party shall be considered to be in default in the performance of any of its obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event is any circumstances beyond the Party's control, including, without limitation, any act of God, war, fire, earthquake, flood, and restraint by court order or public authority. A Force Majeure event does not include normal inclement weather, such as anything less than or equal to a 100 year/24-hour storm event, or inability to pay. Any Party seeking to rely upon this

paragraph shall have the burden of establishing that it could not reasonably have been expected to avoid, and which by exercise of due diligence has been unable to overcome, the Force Majeure.

10. If for any reason the Court or the DOJ should decline to approve this Agreement in the form presented, the Parties shall use their best efforts to work together to modify the Agreement within thirty (30) days so that it is acceptable to the Court and/or the DOJ. If the Parties are unable to modify this Agreement in a mutually acceptable manner, this Agreement shall become null and void.

11. This Agreement shall be deemed to have been drafted equally by the Parties, and shall not be interpreted for or against any Settling Party on the ground that any such party drafted it or admitted the truth of any facts asserted in this document for any future litigation or arbitration purposes.

12. The Parties agree to co-operate with each other and any agencies, as described above, in assisting any such agency to locate funds to provide for monitoring and/or remediation of the Site.

13. This Agreement and the attachments contain all of the terms and conditions agreed upon by the Parties relating to the matters covered by the Agreement, and supersede any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and communications of the Parties, whether oral or written, respecting the matters covered by this Agreement. This Agreement may be amended or modified only by a writing signed by the Parties or their authorized representatives.

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4 The Parties hereto enter into this Agreement on the terms set forth herein.

5  
6 Dated: July 16, 2016

California Sportfishing Protection Alliance

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8  
9 By:

Bill Jennings  
Bill Jennings, Executive Director

10  
11 Dated: July \_\_\_\_\_, 2016

12 AGRICULTURAL MANAGEMENT AND  
13 PRODUCTION COMPANY, INC., AGRICULTURAL  
14 MANAGEMENT AND PRODUCTION COMPANY,  
15 LLC, and ROBERT SMYTH

16  
17 By:

\_\_\_\_\_  
Robert Smythe  
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19 PRODUCTION COMPANY, INC. and  
20 AGRICULTURAL MANAGEMENT AND  
21 PRODUCTION COMPANY, LLC  
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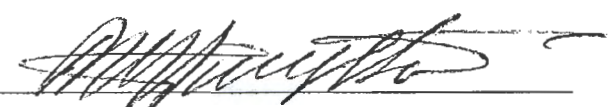
The Parties hereto enter into this Agreement on the terms set forth herein.

Dated: July \_\_\_\_\_, 2016      California Sportfishing Protection Alliance

By: \_\_\_\_\_  
Bill Jennings, Executive Director

Dated: July 13<sup>th</sup>, 2016

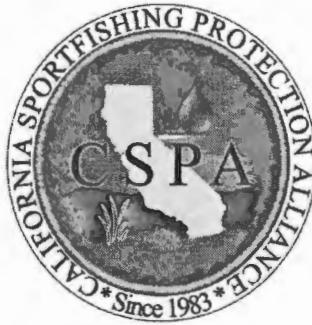
AGRICULTURAL MANAGEMENT AND PRODUCTION  
COMPANY, INC., AGRICULTURAL MANAGEMENT  
AND PRODUCTION COMPANY, LLC, and ROBERT  
SMYTH

By:   
Robert Smythe  
AGRICULTURAL MANAGEMENT AND  
PRODUCTION COMPANY, INC. and  
AGRICULTURAL MANAGEMENT AND  
PRODUCTION COMPANY, LLC

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**EXHIBIT A – CWA Notice of Violation and Intent to Sue Letter**





August 6, 2014

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Robert Smythe, Manager  
Agricultural Management and  
Production Co, Inc.  
14820 Fern Road  
Whitmore, CA 96096

Robert Smythe, Manager  
Agricultural Management and  
Production Co, LLC  
9120 Double Diamond Parkway  
Reno, NV 89521

Robert Smythe, Manager  
Agricultural Management and  
Production Co, Inc.  
14824 Fern Road  
Whitmore, CA 96096

Robinson Smythe, Manager  
Agricultural Management and  
Production Co, LLC  
9120 Double Diamond Parkway  
Reno, NV 89521

Laughlin Associates, Inc.  
Registered Agent for Service of Process  
Agricultural Management and  
Production Co, Inc.  
9120 Double Diamond Parkway  
Reno, NV 89521

Re: Notice of Violations and Intent to File Suit Under the Federal Water  
Pollution Control Act

Dear Mssrs. Smythe and Smythe:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at Agricultural Management and Production Co's ("Agricultural Management") Afterthought Mine facility located at Sections 10, 11 & 15, T33N, R2W, MDM, 24 miles East of Redding, California ("the Facility"). The Parcel numbers for the Facility are 097050019000 and 097040016000. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including Little Cow Creek, the Sacramento River,

the Sacramento – San Joaquin Delta and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted Agricultural Management and Production Co., Robert Smythe and Robinson Smythe shall hereinafter be collectively referred to as “Agricultural Management.”

This letter addresses Agricultural Management’s unlawful discharges of pollutants from the Facility to natural and constructed channels, which convey that storm water to Little Cow Creek, which flows into the Sacramento River and the Sacramento - San Joaquin Delta. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System (“NPDES”). Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Agricultural Management is hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against Agricultural Management under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act. These violations are described more fully below.

**I. Agricultural Management Is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States Without a Permit.**

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutants by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.30(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). An industrial facility that discharges pollutants into a navigable water is subject to regulation as a “point source” under the

Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made water bodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

The Facility is located at Sections 10, 11 & 15, T33N, R2W, MDM, 24 miles East of Redding, California, parcel numbers 097050019000 and 097040016000. The Facility falls under Standard Industrial Classification (“SIC”) Code 1021 (“Copper Ores”). The Facility’s discharges include arsenic, cadmium, copper, iron, mercury, and zinc.

Agricultural Management discharges these pollutants from the Facility through numerous discharge points from adits, and horizontal shafts into Little Cow Creek, the Sacramento River, and the Sacramento - San Joaquin Delta without a valid NPDES permit. Little Cow Creek, the Sacramento River, and Sacramento - San Joaquin Delta are waters of the United States. Accordingly, Agricultural Management’s discharges of water containing pollutants from the Facility are discharges to waters of the United States.

CSPA is informed and believes, and thereupon alleges, that Agricultural Management has the duty to apply for an NPDES permit, as it discharges pollutants from the Facility into navigable waters. Agricultural Management has failed to meet this duty, and has not applied for a current NPDES permit, violating Section 301(a) of the Act. Agricultural Management has discharged, and continues to discharge, pollutants from the Facility to waters of the United States every day through groundwater seepage and every day that there has been or will be any measurable discharge of storm water from the Facility without a permit since Aug 1, 2009, including but not limited to the dates set forth on Attachment A hereto. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Agricultural Management is subject to penalties for violations of the Act since August 6, 2009.

## **II. Persons Responsible for the Violations.**

CSPA puts Agricultural Management and Production Co., Robert Smythe and Robinson Smythe on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Agricultural Management and Production Co., Robert Smythe and Robinson Smythe on formal notice that it intends to include those persons in this action.

**III. Name and Address of Noticing Party,**

California Sportfishing Protection Alliance, Bill Jennings, Executive Director;  
3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

**IV. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

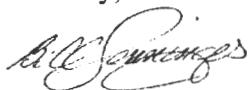
Andrew L. Packard  
Megan Truxillo  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard North, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227  
Email: Andrew@PackardLawOffices.com

**V. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Agricultural Management and Production Co and Robert Smythe to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Agricultural Management and Production Co and Robert Smythe and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

## SERVICE LIST

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U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
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Pamela Creedon, Executive Officer  
Region 5 - Central Valley Region  
Regional Water Quality Control Board  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114



**ATTACHMENT A**  
**Notice of Intent to File Suit, Agricultural Management & Production Co**  
**Significant Rain Events,\* August 5, 2009 – August 5, 2014**

September 1, 2009	February 11, 2010	November 1, 2010	March 5, 2011
September 14, 2009	February 12, 2010	November 7, 2010	March 6, 2011
October 13, 2009	February 20, 2010	November 9, 2010	March 10, 2011
October 14, 2009	February 23, 2010	November 10, 2010	March 13, 2011
October 16, 2009	February 24, 2010	November 20, 2010	March 15, 2011
October 20, 2009	February 26, 2010	November 21, 2010	March 16, 2011
November 6, 2009	February 27, 2010	November 22, 2010	March 18, 2011
November 7, 2009	March 2, 2010	November 23, 2010	March 19, 2011
November 17, 2009	March 3, 2010	November 27, 2010	March 20, 2011
November 18, 2009	March 9, 2010	December 2, 2010	March 22, 2011
November 20, 2009	March 12, 2010	December 4, 2010	March 23, 2011
November 21, 2009	March 25, 2010	December 5, 2010	March 24, 2011
December 11, 2009	March 29, 2010	December 6, 2010	March 25, 2011
December 12, 2009	March 30, 2010	December 8, 2010	March 26, 2011
December 15, 2009	March 31, 2010	December 9, 2010	March 27, 2011
December 16, 2009	April 2, 2010	December 10, 2010	March 28, 2011
December 20, 2009	April 4, 2010	December 13, 2010	April 16, 2011
December 21, 2009	April 11, 2010	December 14, 2010	April 18, 2011
December 27, 2009	April 12, 2010	December 17, 2010	April 19, 2011
December 29, 2009	April 13, 2010	December 18, 2010	April 20, 2011
January 1, 2010	April 14, 2010	December 19, 2010	April 21, 2011
January 12, 2010	April 20, 2010	December 20, 2010	April 23, 2011
January 13, 2010	April 21, 2010	December 21, 2010	April 24, 2011
January 17, 2010	April 27, 2010	December 22, 2010	May 15, 2011
January 18, 2010	April 28, 2010	December 25, 2010	May 16, 2011
January 19, 2010	May 10, 2010	December 26, 2010	May 17, 2011
January 20, 2010	May 19, 2010	December 28, 2010	May 18, 2011
January 21, 2010	May 25, 2010	December 29, 2010	May 23, 2011
January 22, 2010	May 26, 2010	January 1, 2011	May 25, 2011
January 23, 2010	May 27, 2010	January 11, 2011	May 28, 2011
January 24, 2010	June 3, 2010	January 13, 2011	May 29, 2011
January 25, 2010	June 4, 2010	January 29, 2011	May 31, 2011
January 26, 2010	August 28, 2010	January 30, 2011	June 1, 2011
January 30, 2010	September 8, 2010	February 14, 2011	June 2, 2011
February 1, 2010	September 9, 2010	February 15, 2011	June 6, 2011
February 3, 2010	September 20, 2010	February 16, 2011	June 7, 2011
February 4, 2010	October 5, 2010	February 17, 2011	June 28, 2011
February 5, 2010	October 8, 2010	February 18, 2011	June 29, 2011
February 6, 2010	October 23, 2010	February 19, 2011	August 29, 2011
February 7, 2010	October 24, 2010	February 24, 2011	October 4, 2011
February 8, 2010	October 28, 2010	February 25, 2011	October 5, 2011
February 9, 2010	October 29, 2010	March 2, 2011	October 6, 2011

**ATTACHMENT A**  
**Notice of Intent to File Suit, Recology Inc.**  
**Significant Rain Events,\* July 21, 2009 – July 21, 2014**

October 10, 2011	March 31, 2012	December 17, 2012	January 11, 2014
October 11, 2011	April 1, 2012	December 20, 2012	January 29, 2014
November 21, 2011	April 2, 2012	December 21, 2012	February 6, 2014
November 22, 2011	April 4, 2012	December 22, 2012	February 7, 2014
November 23, 2011	April 13, 2012	December 23, 2012	February 8, 2014
November 24, 2011	April 14, 2012	December 25, 2012	February 9, 2014
November 25, 2011	April 15, 2012	December 26, 2012	February 12, 2014
January 20, 2012	April 29, 2012	January 9, 2013	February 13, 2014
January 21, 2012	May 2, 2012	January 23, 2013	February 15, 2014
January 22, 2012	May 3, 2012	February 7, 2013	February 26, 2014
January 23, 2012	May 4, 2012	March 6, 2013	February 27, 2014
January 26, 2012	May 5, 2012	March 7, 2013	February 28, 2014
February 1, 2012	May 7, 2012	March 20, 2013	March 1, 2014
February 8, 2012	September 5, 2012	March 31, 2013	March 2, 2014
February 11, 2012	October 22, 2012	April 4, 2013	March 3, 2014
February 12, 2012	October 24, 2012	April 5, 2013	March 4, 2014
February 13, 2012	October 31, 2012	April 6, 2013	March 5, 2014
February 29, 2012	November 1, 2012	April 7, 2013	March 6, 2014
March 1, 2012	November 16, 2012	April 8, 2013	March 9, 2014
March 2, 2012	November 17, 2012	August 7, 2013	March 10, 2014
March 14, 2012	November 20, 2012	August 8, 2013	March 25, 2014
March 15, 2012	November 21, 2012	August 9, 2013	March 26, 2014
March 16, 2012	November 28, 2012	August 10, 2013	March 27, 2014
March 17, 2012	November 29, 2012	August 11, 2013	March 28, 2014
March 22, 2012	November 30, 2012	August 12, 2013	March 29, 2014
March 23, 2012	December 1, 2012	August 13, 2013	March 30, 2014
March 24, 2012	December 2, 2012	August 14, 2013	March 31, 2014
March 25, 2012	December 4, 2012	September 30, 2013	April 1, 2014
March 26, 2012	December 5, 2012	November 18, 2013	April 25, 2014
March 27, 2012	December 11, 2012	November 19, 2013	May 8, 2014
March 28, 2012	December 12, 2012	November 20, 2013	
March 29, 2012	December 15, 2012	December 7, 2013	
March 30, 2012	December 16, 2012	December 9, 2013	

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.